The principal case decides an important practical question. At common law, disease or injured health would sustain an action for personal injury if the other elements of tort liability were present. *Hunt* v. *Lowell Gas Light Co.*, 8 Allen (Mass.) 169. Accordingly, under the English Workmen's Compensation Act, a disease caused by the employment where there has been no perceptible contact, has been held to fall within the definition of personal injury. *Brintons* v. *Turvey*, [1905] A. C. 230. The phrase "by accident," contained in the English statute, has led to a qualification that the injury must be sustained on a particular occasion, the date of which can be fixed. *Broderick* v. *London County Council*, [1908] 2 K. B. 807. In the absence of such words it would seem correct to permit recovery, as in the principal case, for a disease of gradual growth caused by the conditions of the employment.

MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — WHETHER RELATIVE OF MORTGAGEE BUYING FROM PURCHASER WITHOUT NOTICE IS RELEGATED TO MORTGAGEE'S POSITION. — The defendant church corporation gave the plaintiff a mortgage on certain property which was not recorded. A subsequent mortgage was given by the church, covering that property, and by certain members, covering their own property. This later mortgage was recorded and assigned to a *bonâ fide* purchaser who had no knowledge of the prior unrecorded mortgage. He later assigned to the other defendants, the brother and wife respectively of the mortgagor members. These assignees, without consideration, released the property of the members covered by the mortgage. *Held*, that the holder of the prior unrecorded mortgage, in preference to the holder of the recorded mortgage, may exact full payment of his mortgage debt out of the church property. *Rogis* v. *Barnatowich*, 89 Atl. 838 (R. I.).

The policy of recording statutes is to avoid unrecorded instruments only as against third parties without notice. *National Mut. Building & Loan Ass'n* v. *Blair*, 98 Va. 490, 36 S. E. 513. Accordingly, an unrecorded mortgage prevails against a subsequent recorded mortgage held by one with notice. *Matthews* v. *Everitt*, 23 N. J. Eq. 473. But it seems that the well-established proposition, that one who takes with notice is protected by the good faith of his assignor, should apply in the principal case. *Lowther* v. *Carlton*, 2 Atk. 242; see *Mott* v. *Clark*, 9 Pa. St. 399, 404; *Rutgers* v. *Kingsland*, 7 N. J. Eq. 178, 184. The court argues that this doctrine has no application here because of the equally well-recognized principle that one subject to an equity cannot better his position by re-acquiring through a *bonâ fide* purchaser. *Church* v. *Church*, 25 Pa. St. 278. But it is submitted that the mere fact of close relationship is not enough, that to create this situation, the reassignment, though nominally to a stranger, must be in substance to the party formerly holding with notice. The decision can, however, be rested on the doctrine of marshalling assets. Granting that the individual defendants are in the position of *bonâ fide* purchasers so as to give their mortgage priority, yet, in releasing their exclusive security with knowledge that the remaining security was probably insufficient to satisfy both claims, they have knowingly deprived the plaintiff of an equitable right to marshall them against the property so released. It is only fair, therefore, that their prior rights in the church property should be postponed to those of the plaintiff. *Jordan* v. *Hamilton County Bank*, 11 Neb. 499, 9 N. W. 654; *Gore* v. *Royse*, 56 Kan. 771, 44 Pac. 1053. See 18 HARV. L. REV. 453.

PARDONS — EFFECT — FEDERAL PARDON AFTER FIRST CONVICTION NOT PREVENTING SUBSEQUENT CONVICTION AS SECOND OFFENDER. — A statute provided that one who was twice convicted of felony should, upon a second conviction, suffer an increased penalty. The defendant received a pardon from

the President of the United States after his first conviction. He was subsequently convicted of another felony, and sentenced to increased punishment under the statute. *Held*, that no rights of the defendant under the Constitution of the United States are infringed. *Carlesi* v. *New York* (Supreme Court of the United States, April 6, 1914).

Having in earlier decisions squarely held that the increased penalty is in no sense a punishment for the prior crime, the United States Supreme Court seems clearly right in deciding that the defendant was not put twice in jeopardy for the same offense or deprived of any other right under the Federal Constitution. *McDonald* v. *Massachusetts*, 180 U. S. 311; *Graham* v. *West Virginia*, 224 U. S. 616. The Supreme Court properly refused to review the question as to the construction of the state statute. For a discussion of the question whether the state statute providing an increased penalty ought to be construed to cover the situation in the principal case, see 26 HARV. L. REV. 644 (on the same case in the lower court).

PUBLIC SERVICE COMPANIES — VALUATION FOR RATE PURPOSES — "GOING VALUE" AS PART OF PRESENT VALUE.— In a proceeding before the commission to fix the relator's rates, the question arose whether, in estimating the present value of the relator's property, an allowance should be made for going value. *Held*, that such an allowance must be made. *People ex rel. Kings County Lighting Company* v. *Willcox*, 104 N. E. 911 (N. Y.).

The principal case is an important addition to the law on going value for rate purposes, a subject upon which there has been considerable confusion. See NOTES, p. 744.

SPECIFIC PERFORMANCE — DEFENSES — EFFECT OF THE PRESUMPTION OF DEATH UPON MARKETABILITY OF TITLE. — In a suit for specific performance, the marketability of the vendor's title was attacked on the ground that there was a possibility of a curtesy interest in one who, if living, would be seventy-two years of age, but who had twenty-five years previously left home for the West. At the time he had been in good health and on good terms with his family and corresponded with them for two years after his departure, but then without explanation, communications from him suddenly stopped. All efforts to locate him had failed. *Held*, that specific performance will not be granted. *Cerf* v. *Diener*, 210 N. Y. 156, 104 N. E. 126.

Where one has been absent from home for seven years without being heard from, a presumption arises that the absentee is dead. *Stockbridge, Petitioner*, 145 Mass. 517, 14 N. E. 928; *In re Truman*, 27 R. I. 209, 61 Atl. 598. But this presumption is always rebuttable. *Flynn* v. *Coffee*, 12 Allen (Mass.) 133; *Policemen's Benevolent Ass'n* v. *Ryce*, 213 Ill. 9, 72 N. E. 764. Accordingly, the rule would not aid in deciding the marketability of a given title. *Chew* v. *Tome*, 93 Md. 244, 48 Atl. 701. See 21 HARV. L. REV. 374. For the commonly accepted principle is that if competent persons would have reasonable doubt concerning the vendor's title, a purchaser will not be compelled to accept a conveyance. *Pyrke* v. *Waddington*, 10 Hare 1; *Close* v. *Stuyvesant*, 132 Ill. 607, 24 N. E. 868; *Vought* v. *Williams*, 120 N. Y. 253, 24 N. E. 195. And such reasonable doubt might exist in spite of the effect upon other issues of the presumption raised by the length and circumstances of absence. Decisions tend to recognize this. If, as in the principal case, the only evidence be unexplained absence, and the age of the absentee, if living, would not be beyond belief, the vendor cannot have specific performance. *Vought* v. *Williams*, *supra*; *Chew* v. *Tome*, *supra*. If, however, there be corroborative evidence, such as illness or exposure to danger, or the age of the absentee would be beyond belief, the title may be marketable. *Cambrelleng* v. *Purton*, 125 N. Y. 610, 26 N. E. 907; *McComb* v. *Wright*, 5 Johns. (N. Y.) 263.